

Response Under 37 C.F.R. §1.116
Application No. 10/069,112
Attorney Docket No. 020231

REMARKS

Claims 1-45 are pending.

I. The Information Disclosure Statement

An Information Disclosure Statement is being filed concurrently herewith. The Examiner is requested to acknowledge receipt of the Information Disclosure Statement and consideration of the reference cited therein and to initial and return a copy of the Form PTO/SB/08.

II. Formal Matters – Acknowledge of Claim to Foreign Priority and Receipt of Foreign Priority Document

To date, the Examiner has not acknowledged Applicants claim to foreign priority (JP11-241747 and JP11-345229).

The USPTO Form “Notice of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)”, dated May 7, 2002, indicates that the priority documents were received from the International Bureau (IB). However, USPTO Form “Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495”, dated August 12, 2002, does not list the priority documents in the items received.

Applicants respectfully submit that copies of Applicants’ foreign priority documents were been submitted to the International Bureau and forwarded to the USPTO. However, in order to facilitate prosecution, submitted herewith is a Submission of Priority Documents Under 35 U.S.C. §119, together with certified copies of Applicants’ foreign priority documents.

The Examiner is requested to acknowledge Applicants’ claim to foreign priority and to acknowledge receipt of the certified copies of Applicants’ foreign priority documents.

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III. The “Provisional” Obviousness-Type Double Patenting Rejection

Claims 1-45 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 30-53 of copending Application No. 10/129,950.

The Examiner states that the claims of copending Application No. 10/129,950 are not identical to the claims of the instant application, but that they are not patentably distinct from each other. On pages 4-6 of the Office Action the Examiner presents a table of how the instant claims relate to the claims of copending Application No. 10/129,950.

The obviousness double patenting rejection is “provisional” (in that the copending Application No. 10/129,950 is not allowed) and the obviousness double patenting rejection is the only rejection present in the instant application. If a “provisional” nonstatutory obviousness-type double patenting rejection is the only rejection remaining in an earlier filed application, while the later filed application is rejectable on other grounds, the Examiner should withdraw the provisional rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. See MPEP 804, Section I.B.1. In this instance, the obviousness double patenting issues should be resolved in the later filed copending application.

Applicants request that the Examiner follow the procedure set forth in MPEP 804, Section I.B.1., withdraw the “provisional” double patenting rejection, issue a notice of allowance in the instant application and consider with the double patenting issues in the copending application.

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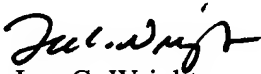
IV. Conclusion

Applicants submit that the instant application is in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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